

Successor liability provisions in the Illinois Retailers' Occupation Tax are found at 35 ILCS 120/5j. (This is a GIL).

August 30, 2002

Dear Xxxxx:

This letter is in response to your letter dated August 14, 2002 and our clarifying telephone conversation of August 27, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be accessed at <http://www.revenue.state.il.us/Laws/regs/part1200/>.

In your letter, you have stated and made inquiry as follows:

I am requesting a written determination that the following real estate transaction is exempt from the provisions of Section 902(d) of the Illinois Income Tax Act and the companion provisions of the Illinois Retailers Occupation Act:

AAA to BBB of real estate consisting of 130 acres commonly known as NAME property, CITY, Illinois, and located within the CITY in township, Section # of Township #, County, Illinois.

Please call if more information is needed. The letter can be faxed to the number show below.

Your letter was referred to me for a response to your inquiry relative to the Retailers' Occupation Tax Act. You will receive a reply from the income tax division under separate cover relative to bulk sales reporting requirements under the Illinois Income Tax Act.

Bulk sales reporting provisions are found at Section 5j (35 ILCS 120/5j) in the Illinois Retailers' Occupation Tax Act and are codified at 86 Ill. Adm. Code 130.1701. The purpose of the provisions is to maximize the collection of delinquent taxes from businesses that might otherwise liquidate assets and disappear.

This regulation states that:

"If any taxpayer, outside the usual course of his business, sells or transfers the major part of any one or more of

- (1) the stock of goods which he is engaged in the business of selling, or
- (2) the furniture or fixtures, or

- (3) the machinery and equipment,
- (4) the real property of any business that is subject to the provisions of the Act, the purchaser or transferee of such assets shall, no later than 10 days after the sale or transfer, file a notice of sale or transfer of business assets with the Chicago office of the Department...."

These are the circumstances under which a seller must give notice of the sale to the Department pursuant to the Retailers' Occupation Tax Act. To the extent that the taxpayer is a retailer, he will have to comply with requirements under the Retailers' Occupation Tax Act. Also, this language means over 50% of the assets in any of the above categories.

In our telephone conversation you represented that your client is not a retailer and that the 130 acres is unimproved vacant land and the client is selling it for development purposes. So long as the client is not a taxpayer subject to the Retailers' Occupation Tax Act, the client is not required to give notice of the sale to the Department pursuant to the Retailers' Occupation Tax Act.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Karl W. Betz
Associate Counsel

KWB:msk
Enc.